

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 RICK FRIERI, on behalf of himself and
12 all others similarly situated, and on behalf
13 of the general public,

14 Plaintiff,

15 v.

16 SYSCO CORPORATION; SYSCO SAN
17 DIEGO, INC.; AND DOES 1-100,
18 Defendants.
19
20
21
22

Case No.: 3:16-cv-01432-JLS-NLS

ORDER:

**(1) GRANTING IN PART
PLAINTIFF'S EX PARTE
APPLICATION TO EXTEND
DISCOVERY DEADLINE AND
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION; and**

**(2) ISSUING FIRST AMENDED
SCHEDULING ORDER**

(ECF No. 25)

23 Before the Court is the Plaintiff's *ex parte* application to extend the discovery
24 deadline for class discovery and the date to file a motion for class certification. ECF No.
25 25. Defendant opposes the request. ECF No. 29.

26 The operative scheduling order requires class discovery to be completed by July
27 12, 2017 and a motion for class certification to be filed by August 7, 2017. ECF No. 20.
28 Plaintiff seeks to extend these deadlines by 120 days. ECF No. 25. Defendant counters

1 that a 120 day extension is unwarranted, and seeks to limit the extension to 45 or 60 days.
2 ECF No. 29.

3 A request to modify the scheduling order is governed by Federal Rules of Civil
4 Procedure 16(b)(4), stating “[a] schedule may be modified only for good cause and with
5 the judge’s consent.” The good cause standard articulated in Rule 16 focuses on the
6 diligence of the party seeking to amend the scheduling order, and the reasons for seeking
7 modification. *Johnson v. Mammoth Recreations, Inc.* 975 F.2d 604, 609 (9th Cir. 1992)
8 (“[T]he focus of the inquiry is upon the moving party's reasons for seeking modification.
9 ... If that party was not diligent, the inquiry should end.”) (citing *Gestetner Corp. v. Case*
10 *Equip. Co.*, 108 F.R.D. 138, 141 (D.Me.1985)).¹ The district court may amend the
11 scheduling order if it “cannot be met despite the diligence of the party seeking the
12 extension.” *Id.* (citing Fed. R. Civ. P. 16 Advisory Committee Notes).

13 The parties submissions demonstrate appropriate diligence and continued meet and
14 confer efforts in seeking and tailoring discovery, and this is the first request to modify the
15 scheduling order. The Court also notes that *both* parties have discovery requests pending
16 that would not be completed by the discovery cut-off, so neither party may claim
17 prejudice. However, the Court finds a 120 day extension to be excessive.

18 Plaintiff’s *ex parte* application is **GRANTED IN PART**. The Court modifies the
19 dates as follows:

- 20 1. Fact and class discovery are not bifurcated but class discovery must be
21 completed by all parties by **October 13, 2017**. “Completed” means that all
22 discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and
23 discovery subpoenas under Rule 45, must be **initiated a sufficient period of**
24

25
26 ¹ The Court also cautions that a delay in production of documents that is not sanctioned by the Court
27 does not provide good cause for a continuance on discovery deadlines. As set forth in the initial
28 scheduling order and reiterated here, discovery is to be initiated in sufficient time to be complete by the
cut-off date. Responses and production must be complete no later than the time specified in the request
or a reasonable time specified in the response. Fed R. Civ. P. 34(b)(2)(B).

1 **time in advance of the cut-off date, so that it may be completed by the cut-**
2 **off date**, taking into account the times for service, notice and response as set
3 forth in the Federal Rules of Civil Procedure. Counsel must promptly and in
4 good faith meet and confer with regard to all discovery disputes in compliance
5 with Local Rule 26.1(a). The Court expects counsel to make every effort to
6 resolve all disputes without court intervention through the meet and confer
7 process. If the parties reach an impasse on any discovery issue, counsel must,
8 within forty-five (45) days of the date upon which the event giving rise to the
9 dispute occurred, file a joint statement entitled, "Joint Motion for Determination
10 of Discovery Dispute." The parties must comply with Judge Stormes'
11 "Chambers' Rules" (available on the court's website) when filing such a
12 motion.

- 13 2. Plaintiff must file a motion for class certification by **November 10, 2017**.
14 3. The parties must contact the Magistrate Judge's Chambers within three court
15 days of receiving a ruling on the class certification motion to set a date for a
16 further Case Management Conference.

17 **IT IS SO ORDERED.**

18 Dated: July 5, 2017

19 
20

21 Hon. Nita L. Stormes
22 United States Magistrate Judge
23
24
25
26
27
28